

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100999

ORDER GRANTING IN PART
MOTION FOR STAY PUT

On October 29, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the Berkeley Unified School District (District). On October 31, 2012, the District filed an opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

Student contends that his stay put placement for sixth grade is a special day classroom (SDC). The District contends that it does not have an available SDC because the District uses a full-inclusion model in which special education and general education students are in a class, co-taught by a general education teacher and a special education teacher.

The parties do not dispute that Student's October 14, 2011 IEP is his last agreed-upon and implemented educational program, which continued Student's placement in a SDC for fifth grade. Fifth grade is the last elementary school grade within the District, and Student will attend middle school for sixth grade. On May 18, 2012, the District held an IEP team meeting to discuss Student's placement for sixth grade. The District's proposed IEP is the same as the October 14, 2011 IEP, except that Student's placement would not be in a SDC. Instead, Student would receive full-inclusion instruction with a class co-taught by a general education teacher and a special education teacher, which included special education and general education students.² Because the District does not maintain a traditional SDC, Student requests that he be placed in a neighboring school district that has a comparable SDC or a certified non-public school (NPS).

Student did not present any legal authority that OAH may order the District to place him in a different school district for stay put, or in an NPS that is not his last agreed-upon and implemented educational program. As to the District's contention that its proposed middle school program constitutes a comparable educational program, that is a triable issue for hearing. Therefore, Student's stay put placement is his October 14, 2011 IEP, which provides for 340 minutes a day of specialized academic instruction in a separate classroom in a public integrated facility, with a full-time one-on-one assistant.

ORDER

Student's motion for stay put is granted in part as his last agreed-upon educational program is his October 14, 2011, which includes placement in a SDC or comparable educational program.

Dated: November 6, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² The only SDC maintains for middle school students is a counseling enriched SDC, which is not comparable to the SDC Student attended in fifth grade.